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# The Discriminatory History of Gun Control

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## The Discriminatory History of Gun Control

### Introduction

Gun control in the United States is based on a long history of discrimination which continues to this day. While blacks were the first targets of gun control measures, different racial and ethnic minorities have been targeted over time, and today the poor now face economic discrimination in many gun control laws. Gun control may be portrayed as a measure to reduce crime,<sup>1</sup> but even in its earliest forms firearms regulation has been used as a means to control specific societal groups by keeping them from possessing weapons. The first selectively restrictive gun control legislation was enacted in the pre-Revolution South and primarily aimed at keeping free blacks from owning firearms and maintaining a white monopoly on power. Many different forms of gun control laws were implemented before and after the Revolution to keep firearms out of African-American hands. Even after the Civil War, Black Codes were enacted which ensured that supposedly freed blacks would not have effective means to defend themselves, and would remain an unarmed and subordinate group in society, unable to defend themselves or fight for their legal and constitutional rights.

By the end of the 19<sup>th</sup> century, the focus of gun control shifted from predominantly anti-black to anti-immigrant legislation. This was also the first time that gun control was enacted in the northern United States where there was almost no firearms legislation in place prior to the late 1800's. With the arrival of European and other immigrants in the country, anti-immigrant prejudices arose and anti-immigrant groups did much to associate immigrants with crime.

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<sup>1</sup>The Brady Campaign, "About the Brady Campaign," <http://www.bradycampaign.org/about/>.

Unlike the South, Northern gun control laws were much less explicitly discriminatory in their aims and their terms. In particular, discretionary permitting allowed authorities to selectively issue licenses and was tantamount to absolute authority to deny permits to immigrants or other supposedly dangerous elements of society.

The Gun Control act of 1968 was another major shift in firearm restrictions. The supposed aim of this bill was a reduction in crime, but an underlying motive was to keep black militant groups from arming themselves with readily available and inexpensive weapons. The new objective became the removal of inexpensive firearms from the market. Banning cheap guns was justified as a safety precaution to protect consumers and a way to keep criminals from accessing cheap firearms. One of the major accomplishments of this kind of legislation, however, was keeping guns out of the hands of the poorer people in society. The poor had truly become the primary target in gun control. Gun bans were instituted in order to keep the poor from legally possessing firearms. On the surface this seems like a reasonable way to keep guns out of crime prone areas. In reality, it ensures that criminals will be the only people with firearms. People who obey the law, but need housing assistance, will have no means to protect themselves.

Some may argue that this prejudice is a necessary evil in the quest to reduce gun violence. Many criminologists conclude that the mere availability of firearms does not necessarily lead to gun violence. Like most scholarly subjects, however, there are disagreements in the field. The merits of some of these counter arguments will be discussed later in the paper. Although it may seem initially counter intuitive that gun control is not an effective means to reduce crime, it will be demonstrated that the demand for firearms by criminals will exist regardless of their legality. Felons account for the vast majority of homicides committed with

guns and by definition are not legally allowed to even possess firearms.<sup>2</sup> The actual effectiveness of any proposed gun control must be evaluated for its potential positive impact on crime rather than its emotional appeal.

### **Southern Gun Control**

Gun control existed in North America even before the creation of the United States and was racially motivated in its earliest forms. The first law in the colony of Virginia that mentioned African-Americans was a 1664 act that barred free blacks from owning firearms.<sup>3</sup> Another pre-Revolutionary example is “An Act for the Better Ordering of Negroes and Slaves” enacted by South Carolina in 1712 which included provisions addressing firearm ownership by blacks. Virginia also passed “An Act for Preventing Negroes Insurrections” around the same time.<sup>4</sup> The title of Virginia’s act reveals the true motivation behind Southern legislation, which was to keep blacks from possessing arms. Slave owners were terrified by the possibility that armed blacks might stage an uprising. Laws differed from state to state, but in many cases it was the free blacks that were the primary targets of gun control. Apparently, it was free black men who were thought to be more likely to stir up discontent and lead rebellions. Black slaves were usually carefully monitored and therefore seemed like less of a threat to many whites.<sup>5</sup>

The Nat Turner rebellion in August of 1831 was the realization of slave owner’s greatest fears. Over 70 slaves and free blacks took part in an uprising that killed at least 57 white people

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<sup>2</sup> Gary Kleck and Don B. Kates, *Armed* (New York: Prometheus Books, 2001), 20.

<sup>3</sup> Markus T. Funk, “Gun Control and Economic Discrimination: The Melting-Point Case-in-Point,” *The Journal of Criminal Law and Criminology* 85 (1995): 794.

<sup>4</sup> Stefan B. Tahmassebi, “Gun Control and Racism.” *George Mason University Civil Rights Law Journal* 2 (1991): 69.

<sup>5</sup>Robert J Cottrol and Raymond T. Diamond, “The Second Amendment: Toward an Afro-Americanist Reconsideration,” *Georgetown Law Journal* 80 (1991): 336.

before it was finally put down. This prompted a number of Southern states to adopt measures that would restrict blacks from owning guns. For example,, Delaware instituted a law in December of 1831 that required free blacks to obtain a firearms license if they wished to have weapons. In the same month Maryland and Virginia passed laws that prohibited free blacks from carrying guns. Georgia soon followed by barring free blacks from firearm ownership entirely in 1833. Although the Nat Turner rebellion motivated Southern legislation to restrict gun ownership to black people, ironically, no firearms were used during that uprising.<sup>6</sup> The racist laws passed following the rebellion were reactionary response passed primarily out of fear of blacks, free or not. This trend of restricting the firearm rights of those perceived as a threat to the established powers of society will continue throughout the history of the United States.

The restriction of gun rights runs counter to both the United States Constitution's Second Amendment as well as many state constitutions that more clearly articulate the individual's right to firearms.<sup>7</sup> Legal challenges were mounted in an attempt to change these measures that were adopted to keep blacks from owning guns. Just as African-Americans were continually denied their other basic rights, the right to bear arms was also trampled on. In 1844 the North Carolina Supreme Court ruled in *State v. Newson* that laws barring free blacks from using guns were not in violation of the Second Amendment.<sup>8</sup> A similar decision was handed down in the Georgia court case of *Cooper v. Mayor of Savannah* which ruled, "free persons of color have never been recognized as citizens; they are not intended to bear arms."<sup>9</sup> Discriminatory gun control prior to the Civil War peaked with the U.S. Supreme Court ruling regarding the Dred Scott case. This

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<sup>6</sup> Robert J Cottrol and Raymond T. Diamond, "The Second Amendment," 338.

<sup>7</sup> District of Columbia v. Heller, 554 U.S. 290 (2008).

<sup>8</sup> Lee Kennett and James LaVerne Anderson, *The Gun in America: The Origins of a National Dilemma* (Westport, Connecticut: Greenwood Press, 1975), 152.

<sup>9</sup> Tahmassebi, 70.

ruling essentially declared African-Americans were not legally people. The ruling concluded that:

It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased ... *and to keep and carry arms wherever they went*. And all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State.<sup>10</sup>

The sentiment that black people should not possess arms was prevalent throughout the United States and especially in the South. Everyone from the local farmer to the state and US Supreme Courts felt that legally restricting the rights of African-Americans to possess arms was socially and legally acceptable.

The Civil War and the passage of the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> amendments were supposed to give African-Americans the same rights as all other US citizens. Just as the South found ways to keep black people from voting, it also found ways to ensure that they remained unarmed and vulnerable to coercion by violence. The adoption of "Black Codes" by Southern legislatures directly contradicted the spirit and letter of these newly enacted amendments, but were enforced anyway. Although Black Codes applied to many different aspects of life, one of its major aims was to keep blacks from possessing firearms.<sup>11</sup> For example, Mississippi's Black Code states: "Be it enacted . . . that no freedman, free Negro or mulatto, not in the military . . . and not licensed so to do by the board of police of his or her county, shall keep or carry firearms of any kind, or any ammunition."<sup>12</sup> The most racist element of this provision is the requirement that a black person must obtain a permit from the police to own a gun, while white people are not

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<sup>10</sup> *Dred Scott v. Sandford*, 60 U.S. 393 (1856), 416-17.

<sup>11</sup> Lee Kennett and James LaVerne Anderson, 154.

<sup>12</sup> Tahmassebi, 71.

obligated to do the same. Only black people are required to secure a permit and this must be acquired through a board of police, which was undoubtedly made up of white people unlikely to issue such a certificate. It is very similar to the literacy requirement enacted to keep blacks from voting. It was the clerk who decided if the person was literate no matter how well they read. Permitting laws such as these arise much later in the North, although they are not as explicit in their racial discrimination.

The Civil Rights Act of 1866 was designed to eliminate these Black Codes. Northern legislators were certainly aware of Southern attempts to keep blacks from possessing arms. Delaware Senator William Salisbury comments in the passage of the Act that "in most of the southern States, there has existed a law of the State based upon and founded in its police power, which declares that free Negroes shall not have the possession of firearms or ammunition. This bill proposes to take away from the States this police power."<sup>13</sup> The enforcement of the Civil Rights Act of 1866 was problematic. With or without Black Codes, local law enforcement continued much as before passage of the Act. There was often an understanding that white retailers would alert the local sheriff if an agitator or African-American bought a gun. The person would then be arrested and the weapon confiscated.<sup>14</sup> No amount of federal legislation could change ingrained racism, but it was becoming politically more difficult for legislators to explicitly target blacks for disarmament.

Different means were needed to keep African-Americans from gaining access to weapons. Following the Civil War there was an influx of firearms into civilian hands. The years

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<sup>13</sup> Tahmassebi, 72.

<sup>14</sup> Don B. Kates, *Restricting Handguns: The Liberal Skeptics Speak Out* (New York: North River Press, 1979), 14.

of war production vastly increased the number of guns in the country. New manufacturing processes also created inexpensive firearms. This ensured that even the poor could afford a gun. This worried certain people in the South because it meant poor blacks would be better able to arm themselves. In 1879, white supremacists regained control of the Tennessee legislature and implemented the “Army and Navy Law”. This banned the sale of all handguns except the Army Navy models, which were the most expensive.<sup>15</sup> The requirement was considered to be the precursor to the “Saturday Night Special” laws currently used in an attempt to remove cheap firearms from the market.<sup>16</sup> The timing of this law worked in favor of the Ku Klux Klan. Its members had already armed themselves with all the cheap firearms they would need and the poor had not yet been able to save up enough to buy their own weapons. Arkansas also implemented a nearly identical law in 1881.<sup>17</sup> South Carolina used a different method to keep minorities from owning firearms. A law enacted in 1902 outlawed the sale of pistols to everyone except sheriffs and their special deputies. This may not seem overtly racist except that sheriffs and their “special deputies” were usually Klan members, and South Carolina blacks would be unable to secure weapons to defend themselves from violent KKK actions.<sup>18</sup> Selective permitting continues to be an issue in modern gun control legislation.

The discrimination of many Southern laws was recognized by Justice Wanamaker in his dissent in an 1920 Ohio Supreme Court decision where he comments that, “it is only necessary to observe that the race issue there (in reference to the South) has extremely intensified a decisive purpose to entirely disarm the negro, and this policy is evident upon reading the

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<sup>15</sup>Kates, *Restricting Handguns*, 14.

<sup>16</sup>Funk, 797.

<sup>17</sup>Tahmassebi. 74.

<sup>18</sup>Kates, *Restricting Handguns*, 15.



opinions.”<sup>19</sup> Further evidence regarding the racist intent of gun control laws can be found in the 1941 Florida Supreme Court case of *Watson v. Stone* involving a gun violation under an 1893 Act, where Justice Buford wrote:

I know something of the history of this legislation. The original Act of 1893 was passed when there was a great influx of negro laborers in this State... The Act was passed for the purpose of disarming the negro laborers... and to give the white citizens in sparsely settled areas a better feeling of security. *The statute was never intended to be applied to the white population.*<sup>20</sup>

This ruling clearly demonstrates that although Southern legislation became less overtly discriminatory, its aim was still to keep blacks from owning firearms. The history of Southern gun is completely intertwined with that of racial discrimination. Almost no attempts were made by the states to disarm the KKK or other violent groups, but every effort was taken to keep black people from possessing guns. Without a means to defend themselves, they would be unable to stand up against the night riders and other terror groups that were targeting them due to their race. It was the monopoly on power and weapons that allowed the white population to oppress the black people for so long. Many measures used to disarm African-Americans in the South would soon be adopted in the North, where gun regulations were almost nonexistent until the late 1800's and the early 1900's.

### **Gun Control in the North**

No permits or licenses were required to carry a concealed weapon in the supposedly more civilized Northern states until fairly recently. In contrast, concealed weapon bans were fairly common in the supposedly gun slinging and dueling world of the South and West. Laws against

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<sup>19</sup> Clayton E. Cramer, “The Racist Roots of Gun Control” *Kansas Journal of Law and Public Policy* 2 (1995): 21.

<sup>20</sup> Robert J Cottrol and Raymond T. Diamond, “Never Intended to be Applied to the White Population” *Chicago-Kent Law Review* 70 (1995): 1307.

carrying concealed weapons appeared in Kentucky as early as 1813. Indiana followed in 1819 and by 1850 every Western state had prohibited carrying a concealed weapon. In comparison New Jersey had only one gun law (prohibiting dueling) in effect prior to 1924. No licenses, permits, or other measures were needed to buy, own, or carry a weapon. This was indicative of most Northern states until recent times.<sup>21</sup>

Efforts to tighten gun control laws in the North only began in response to a dramatic rise in immigration. Prior to this period it was socially acceptable for an upper class man to carry a small pocket pistol to protect himself from criminals. The perceived need for stricter gun control laws coincided with the arrival of Eastern and Southern Europeans who were commonly viewed as “criminal elements” in society. Armed robbery was frequently attributed to immigrants and “foreign-born anarchists”.<sup>22</sup> These prejudices were perpetuated by groups such as the Immigration Restriction League and the American Protective Association, which supported a ban on all firearm ownership by aliens. The public began to rally behind such legislation since these organizations managed to convince them that gun control would keep gun-wielding immigrants at bay and reduce crime. Most people were unaware that these anti-immigrant groups were founded and supported by factory owners and other capitalists who realized that an unarmed workforce of immigrants would have a difficult time unionizing in the face of weapon wielding strike breakers.<sup>23</sup>

The first widespread restrictions on firearm ownership in the North came in New York City, which was the hub of European immigration. Efforts had been underway for a number of

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<sup>21</sup> Kates, *Restricting Handguns*, 11-12.

<sup>22</sup> Kates, *Restricting Handguns*, 15-6.

<sup>23</sup> Tahmassebi, 77.

years to slowly push the public into accepting gun control. For example, a newspaper editorial from the time states that pistols were found “chiefly in the pockets of ignorant and quarrelsome immigrants of law breaking propensities.”<sup>24</sup> Newspaper headlines of isolated incidents such as “Cleans Pistol, Shoots Wife” and “Father Shot by Son, Dies Clasp ing Child” helped to stoke anti-gun feelings.<sup>25</sup> The culmination of these efforts was the passage of the Sullivan Law on May 29, 1911. Senator Sullivan declared the bill would “do more to carry out the commandment thou shalt not kill and save more souls than all the talk of all the ministers and priest in the state for the next ten years.”<sup>26</sup> History shows that the senator’s ambitious goal was not achieved and that the legislation was clearly misguided. The year before the Sullivan Law was passed there were 108 homicides in New York City, and the year after its implementation there were 113.<sup>27</sup> This law required that any person wishing to own a firearm must obtain a permit from the New York City Police Department. Although this may seem like an innocent measure aimed at reducing crime, the police were effectively granted nearly absolute discretion to decide who could be allowed to own firearms and gave them the power to keep firearms out of the hands of immigrants, labor organizers, and anyone else deemed a potential threat to the establishment. For example, when a South African engineer who had been threatened by one of his workers applied for a permit he was denied due to his status as an immigrant. A New York Times article from September 6, 1911 demonstrates some failings of the Sullivan law. A man was holding a burglar at gunpoint in his home when the thief asked if he had a permit for the gun, which he did not. The man realized that he would be in violation of the law if he called the police so he agreed to

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<sup>24</sup> Kates, *Restricting Handguns*, 17.

<sup>25</sup> Lee Kennett and James LaVerne Anderson, 173.

<sup>26</sup> Lee Kennett and James LaVerne Anderson, 175.

<sup>27</sup> Lee Kennett and James LaVerne Anderson, 185.

let the thief go and the crime went unreported.<sup>28</sup> More significantly, during the first three years of the Sullivan Law over 70 percent of people arrested for its violation had Italian surnames.<sup>29</sup>

Despite its shortcomings, the idea of police issued gun permits spread throughout the United States. Between 1911 and 1934 Arkansas, Hawaii, Michigan, Missouri, New Jersey, North Carolina and Oregon all passed laws similar to the Sullivan Law.<sup>30</sup> The 1920 Ohio Supreme Court case of *State v. Nieto* upheld the conviction of a Mexican man who was convicted of carrying a concealed weapon while he was lying in his bed.<sup>31</sup> California and New Hampshire went as far as banning aliens from owning firearms. In both states the law was challenged in court and in both states the bans were upheld.<sup>32</sup> A 1918 ruling by a New Hampshire court which upheld the alien gun ban, demonstrated the feelings of the time when it says:

Native Citizens are justly presumed to be imbued with a natural allegiance to their government which unnaturalized foreigners do not possess. The former inherit a knowledge and reverence for our institutions, while the latter as a class do not understand our customs or laws, or enter into the spirit of our social organizations.<sup>33</sup>

The sentiments of the country had shifted in support of bans and restrictions on guns that might keep them out of the hands of “dangerous” immigrants.

### **Nationalizing Gun Control**

Police permitting has become a generally accepted practice, despite its original ineffectiveness and discriminatory enforcement over the years. The next major step in gun

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<sup>28</sup> Lee Kennett and James LaVerne Anderson, 183-4.

<sup>29</sup> Funk 799.

<sup>30</sup> Tahmassebi, 77.

<sup>31</sup> Cramer, “The Racist Roots of Gun Control”, 21.

<sup>32</sup> Kates, *Restricting Handguns*, 21.

<sup>33</sup> Kates, *Restricting Handguns*, 21-2.

legislation was the passage of The Gun Control Act of 1968 which imposed many requirements on the sale and transfer of firearms. It restricted the importation of inexpensive military surplus weapons which had been flooding into the US since the end of WWII. This particular measure had the support of domestic gun manufacturers who did not want the competition from abroad. A minimum age was set for the sale of weapons (18 for long guns and 21 for handguns) and the Act also banned mail ordering guns.<sup>34</sup> Many of these statutes seem perfectly reasonable and even necessary. Some of the real purposes behind the Act, however, may have been racist.

The Gun Control Act of 1968 was passed at a time when the Black Panthers were making headlines by openly and legally carry weapons during their demonstrations. Muckraking journalist Robert Sherrill, a strong proponent of stringent gun control says, "The Gun Control Act of 1968 was passed not to control guns but to control blacks, and inasmuch as a majority of Congress did not want to do the former but were ashamed to show their goal was the latter."<sup>35</sup> Black Panthers were often times carrying mail order military surplus rifles that were targeted in the 1968 Act.<sup>36</sup> The desire to ban the shipment of firearms through the mail goes back at least until 1924 when Tennessee Senator John K. Shields introduced a bill in the United States Congress that would prohibit mailing pistols. He commented that, "Can not we, the dominant race, upon whom depends the enforcement of the law, so enforce the law that we will prevent the colored people from preying upon each other?"<sup>37</sup> Just as instances of shock or fear accompanied passage of earlier gun control measures such as those following the Nat Turner rebellion, an atmosphere of panic accompanied the adoption of The Gun Control Act of 1968. The

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<sup>34</sup> Lee Kennett and James LaVerne Anderson, 243-4.

<sup>35</sup> Robert Sherrill, *The Saturday Night Special* (New York: Charterhouse, 1973), 280.

<sup>36</sup> Cramer, "The Racist Roots of Gun Control", 21.

<sup>37</sup> Funk, 799.

assassinations of John F. Kennedy, Robert Kennedy, and Dr. Martin Luther King Jr. in a span of only a few years and the violence stemming from civil rights and war protests all served to harden the public's view on firearms.<sup>38</sup>

Although many critics of Gun Control Act of 1968 claim that it is racist, much of the discrimination following the Act is economic and class based. The poor have become the primary targets of gun control laws. The reduction in the supply of cheap firearms was the first step toward class prejudice in modern times. The catchphrase for inexpensive guns became the "Saturday Night Special". The Army and Navy Laws adopted by Southern legislatures in the late 1800's were the precursor to this movement. Unlike the laws of the 1800's, which only allowed for the purchase of expensive guns, the Saturday Night Special movement attacked cheap guns from the bottom by instituting requirements that would prohibitively drive up the cost of firearms. Simply banning low cost guns from the market would be problematic since it might indicate a desire to disarm the poor. For example, State governments and the Bureau of Alcohol, Tobacco, and Firearms used melting point tests and tensile strength requirements, supposedly in the name of consumer safety, in order to remove the most inexpensive guns from the market.<sup>39</sup> Criminologist Markus T. Funk best describes the true impact of such laws:

Some legislators, apparently due to either misinformation or personal biases (both racial and socioeconomic), have enacted melting- point laws that remove many of the lower-cost guns from the market as a method of crime prevention. Melting-point laws, however, merely bar those of lesser economic means from having a way to protect themselves against the criminals that prey on them, and such an outcome is neither fair, nor is it criminologically sound.<sup>40</sup>

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<sup>38</sup> Sherrill, 280-1.

<sup>39</sup> Funk, 765-6.

<sup>40</sup> Funk, 806.

These requirements may not seem exceptionally onerous if they are indeed aimed at consumer safety. One of the primary justifications behind banning affordable guns is the notion that Saturday Night Specials are used only by criminals to commit violence. This feeling is best exemplified by the case of *Delahanty v. Hinckley* where a D.C. police officer who was wounded in the attempted assassination of President Reagan and sued the manufacturer of the inexpensive handgun used. The plaintiff argued that cheap guns had no useful purpose. The court recognized, however, that the poor, not the criminals, would feel the greatest affects of a Saturday Night Special Ban when it said:

The fact is, of course, that while blighted areas may be some of the breeding places of crime, not all residents are so engaged, and indeed, most persons who live there are law abiding but have no other choice of location. But they, like their counterparts in other areas of the city, may seek to protect themselves, their families and their property against crime, and indeed, may feel an even greater need to do so since the crime rate in their community may be higher than in other areas of the city. Since one of the reasons they are likely to be living in the “ghetto” may be due to low income or unemployment, it is highly unlikely that they would have the resources or worth to buy an expensive handgun for self defense.<sup>41</sup>

While this court generally understood the negative impact an inexpensive gun ban would have on the poor, it neglects to also mention that the urban poor may be the least likely to receive the effective protection from the police.<sup>42</sup>

### **New Targets of Gun Control**

Saturday Night Special bans are not the only instance of legislation supposedly aimed at reducing crime that disproportionately impacts the most vulnerable members of our society. A more recent trend is banning guns in public housing projects. Like many other laws, this may

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<sup>41</sup> Brief of *Amicus Curiae* on behalf of The Rutherford Institute in support of respondent in *D.C. v. Heller* No. 07-290 (2008), 20-12.

<sup>42</sup> Funk, 795-6

seem justified by a desire to reduce crime and gun violence in areas where it is most prevalent. Public housing often experiences disproportionately high rates of crime, so removing guns from these areas appears to be a well meaning remedy. This, however, may be an overly simplistic solution when looking at who is actually committing the crimes in public housing projects. Former Secretary of Housing and Urban Development Henry Cisneros admitted that a large majority of people arrested in housing projects were non residents.<sup>43</sup> Public housing gun bans therefore results in law abiding residents being disarmed even though they were committing a minority of the crimes in the area and were frequently the victims of the crimes involved.

There are inherent problems with attempting to legislate away gun violence. If someone is willing to break a law by using a firearm while committing a crime, which usually carries a more severe sentence, then why would they bother to follow a law that bans them from keeping a gun in their home? This leaves law abiding residents at the mercy of those who are already willing to commit crime with no means to defend themselves and a police force that is unlikely to be able to assist them fast enough in a time of need. Not all public housing residents, however, are willing to accept being unlawfully disarmed. A couple from Maine, who lived in public housing, sued the state over a ban on guns. The state supreme court overturned the restriction on firearms ownership. Like so many other gun control laws, this measure was a reactionary decree passed in response to a rapidly rising crime rate in the 1970's.<sup>44</sup> In 2005 the San Francisco Housing Authority implemented a provision that banned the possession of firearms and ammunition by residents. A lawsuit was filed and the Housing Authority settled the case by removing the provision in light of the *D.C. v. Heller* decision which outlawed outright

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<sup>43</sup> Cramer, "The Racist Roots of Gun Control", 22.

<sup>44</sup> "High Court in Maine Overturns Ban on Guns in Public Housing." *The New York Times* 5 April 1995: A16.



gun bans.<sup>45</sup> Public housing gun bans do not try to address the underlying causes of these crimes, or even seek to prevent them from occurring. They take aim at an easy target so that politicians can say something is being done to prevent violent crime, and leave economically disadvantaged people to resort to the courts to protect their rights to legally own firearms and defend themselves.

New York City is still home to some of the most restrictive gun control laws in the nation which are in effect highly discriminatory against the poor. The city still requires a permit to purchase a gun, just as it did when the Sullivan Law was passed in 1911. At that time, the police could simply deny certain people permits based on ethnicity, something that would not be allowed today. Instead, New York City has created a set of requirements that virtually ensures that the poor will be unable to secure a permit. The process of applying is time consuming and complicated. The city requires that the permit be submitted in person, Monday through Friday, 8:30 a.m. to 3:30 p.m. at the licensing division. This means if someone works a 9-5 job that they will have to take time off from work and get to Manhattan to submit an application. Taking time off work may be impossible for poor people.

New York City still makes the permitting process difficult for immigrants as well. One requirement is:

Proof of Citizenship/Alien Registration: If you were born outside the United States, you must submit your naturalization papers or evidence of citizenship if derived from your parents. All other applicants born outside the United States must submit their Alien Registration Card. If you have lived in this country less than 7 years you must submit a good conduct certificate, or equivalent, from your

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<sup>45</sup> Bob Egelko, "San Francisco Housing Authority Settles Gun Lawsuit," *San Francisco Chronicle*, January 14, 2009, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/01/13/BALM15A1SG.DTL> (accessed April 22, 2009).

country of origin and two (2) letters of reference that certify to your good character.<sup>46</sup>

No rationale or justification could be found for the additional requirements imposed on alien residents of less than seven years, and the seven year standard appears on its face to be arbitrary and simply intended to discourage foreign born people from applying for a gun permit. The most effective measure to keep the poor from owning guns is the cost to apply for the permit. The application fee is \$340 and the applicant must also be fingerprinted at an additional cost of \$94.25. These costs seem deliberately prohibitive considering that it costs less than \$100 to register a car in New York.<sup>47</sup>

This expensive and time consuming process described above is only to obtain a restricted premises license, described in the New York Police Department materials as follows:.

It is issued for your RESIDENCE or BUSINESS. The Licensee may possess a handgun ONLY on the premises of the address indicated on the front of the license. Licensees may also transport their handguns and ammunition in SEPARATE LOCKED CONTAINERS, DIRECTLY to and from an authorized range, or hunting location. HANDGUNS MUST BE UNLOADED while being transported.<sup>48</sup>

If one wishes to receive a license to carry a gun they must complete a letter of necessity. This leaves the issuance of a carry permit entirely up to the discretion of the police. The police literature fails to include any definition of what they consider a necessity, allowing them to arbitrarily determine the requirements. This leaves open the possibility of discrimination and favoritism. In practice, very few people are issued carry permits in New York City. In 2007 only 2,516 people received a carry permit. In many cases only the well connected or famous

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<sup>46</sup> New York Police Department, "Handgun Licensing Information," [http://www.nyc.gov/html/nypd/html/permits/handgun\\_licensing\\_information.shtml#fees](http://www.nyc.gov/html/nypd/html/permits/handgun_licensing_information.shtml#fees).

<sup>47</sup> New York Department of Motor Vehicles, "Registration Fees and Vehicle Use Taxes for Passenger Vehicles," <http://www.nysdmv.com/regfee.htm>.

<sup>48</sup> New York Police Department, "Handgun Licensing Information," [http://www.nyc.gov/html/nypd/html/permits/handgun\\_licensing\\_information.shtml#fees](http://www.nyc.gov/html/nypd/html/permits/handgun_licensing_information.shtml#fees).

ever have a chance of getting a license. Notable people who have permits in New York are Donald Trump Jr., Robert DeNiro, and Ronald Lauder.<sup>49</sup> Only the privileged elite are given the ability to defend themselves and those who are much more likely to face everyday violence are not extended such rights.

### **Shortcomings of Gun Control**

The history of gun control in America is undeniably racist and discriminatory. Modern gun control laws are less overtly discriminatory, but they certainly have a disproportional impact on the poor. The justification for this state of affairs should be that the societal benefits of gun control clearly outweigh the social costs to the poor, but there is no consensus of research and facts to support this position. In fact, a large body of academic work exists to contradict the notion that gun control effectively reduces gun crime. The comprehensive details of this academic dispute is beyond the scope of this paper, but certain important figures in the field will be addressed and some popular notions will be challenged in an attempt to provide a starting point for those interested in a performing a more complete analysis.

A common tactic of many anti-gun groups is to play on the emotions of people rather than look at the facts. Groups such as the Brady Campaign and Million Mom March propose extremely restrictive gun laws and even bans on entire classes of firearms.<sup>50</sup> These groups use tragic instances of violence to garner support for their cause.<sup>51</sup> A common trend with many groups that support more firearms restrictions is to play on emotions of people rather than look at

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<sup>49</sup> Christopher Faherty, "Concealed Pistols Permits Drop in City," *The New York Sun*, August 29, 2007, <http://www.nysun.com/new-york/concealed-pistols-permits-drop-in-city/61496/> (accessed March 29, 2009).

<sup>50</sup> Gary Kleck, *Targeting Guns* (New York: Aldine De Gruyter, 1997), 12.

<sup>51</sup> The Brady Campaign, "April 16th: A Day of Action and Remembrance," <http://www.bradycampaign.org/action/april16/videos/>.

the facts. A study funded by the National Institute of Justice, which is the research, development and evaluation agency of the US Department of Justice concluded that:

There is no good reason to suppose that people intent on arming themselves for criminal purposes would not be able to do so even if the general availability of firearms to the larger population were seriously restricted. Here it may be appropriate to recall the First Law of Economics, a law whose operation has been sharply in evidence in the case of Prohibition, marijuana and other drugs, prostitution, pornography, and a host of other banned articles and substances, namely, that demand creates its own supply. There is no evidence anywhere to show that reducing the availability of firearms in general likewise reduces their availability to persons with criminal intent or that persons with criminal intent would not be able to arm themselves under any set of general restrictions on firearms.<sup>52</sup>

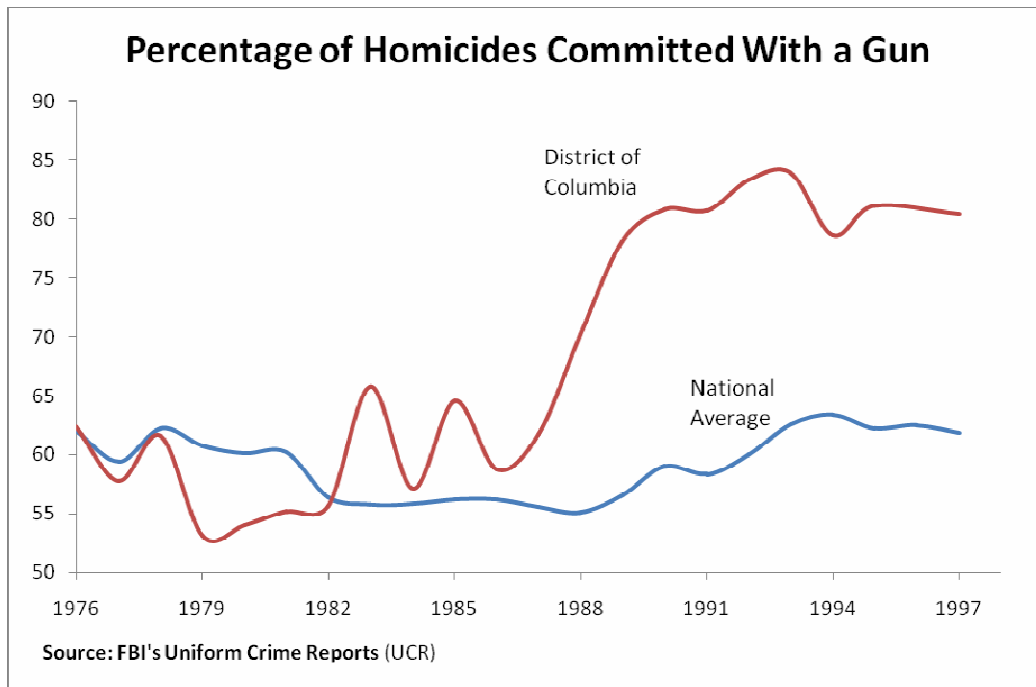
The idea that gun control is an effective measure to reduce crime is so ingrained in many people's minds that they fail or refuse to connect the problems that could arise from firearm prohibition to the crime that resulted from the prohibition of drugs and alcohol.

Different restrictions on firearms have been implemented throughout the United States and various foreign countries. The gun laws in Washington D.C. were some of the strictest in the nation. In 1976 the city completely prohibited the ownership of handguns, but saw no meaningful or lasting reduction in gun crime.<sup>53</sup>

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<sup>52</sup> Kleck and Kates, *Armed*, 22.

<sup>53</sup> David B. Kopel, *The Samurai, The Mountie, and the Cowboy* (New York: Prometheus Books, 1992), 147.



This graph shows that, after an initial decline, the percentage of homicides committed in Washington DC with a gun skyrocketed above the national average in the 1980's after the implementation of a handgun ban. Clearly the availability of guns in the city did not stop people from committing homicides with guns. Other factors existed in Washington D.C. that may have contributed to this trend, such as the crack epidemic of the 1980 or worsening economic conditions in the city, but a gun ban was simply not an effective measure to stop people from committing homicides with guns.

Some contend that criminals just went to other states to get their firearms and that a national ban would be more effective. Great Britain took this approach in 1997 and enacted a handgun ban after a mass shooting. In 1997 there were 4,904 instances of firearms being used in crimes in Britain. By 2000 the number had jumped to 6,843 and in 2005 the number peaked at [20]

10,979. Even in 2008 guns were still used in crimes 9,803 times.<sup>54</sup> The firearm ban has also created a lucrative black market for gun in Great Britain where police are having a difficult time keeping illegal weapons off the streets.<sup>55</sup> Police officials also say that guns were once only used in the most serious crimes, but guns are now being used more often in petty offenses. It is also estimated that the number of illegal guns in England has tripled between 1996 and 2000 and authorities believe many of these weapons were smuggled into the country.<sup>56</sup> Criminals will obviously find other means to secure their firearms. Even on a small island nation, a total handgun ban did not effectively reduce gun crime. The handgun ban in Great Britain should raise questions as to how effective a national handgun ban in the United States would be.

To understand why restrictions on classes of guns or even total gun bans are ineffective the criminal market for guns should be better understood. Banning or limiting the number of firearms assumes that the market for guns is supply driven. That is, the presence of more guns in the market will lead to greater demand for the firearms supplied. In reality the illicit gun market is demand led and supplies rise to meet that demand. Certain people will always demand guns, and there will always be a market for weapons, even if they are illegal.<sup>57</sup> The argument that Saturday Night Specials need to be banned because they constitute a large portion of guns used in crimes feeds into the misconception of supply led gun crime. Criminals use whatever weapons are most easily and readily available to them. Removing cheap guns from the market means that criminals will possibly resort to stealing guns from lawful owners. Banning guns will

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<sup>54</sup> Chris Kershaw, Sian Nicholas, and Alison Walker. "Crime in England and Wales 2007/08." National Statistics, July 2008. <http://www.homeoffice.gov.uk/rds/pdfs08/hosb0708.pdf>.

<sup>55</sup> Mark Townsend, "The Gun Lords' Deadly Legacy," *The Observer* (England), December 9, 2007, Observer Home Pages, 16.

<sup>56</sup> Tony Thompson, "Gun Crime Rockets to Record High," *The Observer* (England) December 31, 2000, <http://www.guardian.co.uk/uk/2000/dec/31/ukcrime.ukguns> (accessed April 24, 2009).

<sup>57</sup> Daniel D. Polsby, "Firearms Costs, Firearms Benefits and the Limits of Knowledge," *The Journal of Criminal Law and Criminology* 86 (1995): 218.

undoubtedly create a black market for gun smuggling, just as it has in Britain. The only people truly affected by gun restrictions are law abiding citizens who may need a firearm for protection, but given enough legislation the cheapest gun may be more than they can afford.<sup>58</sup>

Another popular misconception is that the high rate of firearms ownership is the cause of gun violence in the United States. This position, however, does not hold up to scrutiny. Both Israel and Switzerland have very high rates of gun ownership and the general population has easy access to fully automatic weapons, something not true in the US. Both Israel and Switzerland have compulsory military service and the government distributes weapons to citizens.<sup>59</sup> Israeli and Swiss crime and homicides rates, however, are extremely low.<sup>60</sup> In 2006 the murder rates per 100,000 people was 0.8 in Switzerland and 2.29 in Israel which is on par with, or lower than countries such as Canada, Britain, and New Zealand.<sup>61</sup> There are obviously large cultural and societal reasons for the difference in crime rates, such as wealth, economic standing, and access to social programs, but these two countries demonstrate that the mere availability of guns does not necessarily lead to gun violence.

Certain academic researchers deserve critical attention since their figures are those most commonly used in other academic works or are accepted by the uniformed public. Philip J. Cook is one such researcher. He argues for stricter gun laws and is cited in many medical journal articles on gun violence. Cook's biases are readily apparent from just a small sample of his work. He writes, "For example, most criminal homicides are committed with guns; if a gun

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<sup>58</sup> James D. Wright and Peter H. Rossi, *Armed and Considered Dangerous: A Survey of Felons and Their Firearms* (New York: Aldine De Gruyter, 1986), 238.

<sup>59</sup> Kopel, 301.

<sup>60</sup> Kopel, 278.

<sup>61</sup> United Nations, Tenth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, <http://www.unodc.org/documents/data-and-analysis/CTS10%20homicide.pdf>

had not been available, many of those violent incidents would have ended in cuts or bruises instead of death.”<sup>62</sup> Cook fails to mention that knives, hands, fists and feet account for 18% of all murders in 2007.<sup>63</sup> His assertion is made with no references or citations to authorities, and assumes there is an effective and practical way to remove illegal firearms from the market.

Cook’s assertion is made in an article titled, “The Costs of Gun Violence Against Children.”

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However, his citations to gun fatality rates among “children” include people up to the age of 19.<sup>64</sup> It is impossible to know if Cook realizes that most of the gun violence for that age group occurs almost exclusively for those in their late teens, but it certainly helps his case to include older teenagers in the numbers he cites. Cook puts the overall gun fatality rate per 100,000 for males ages 0-19 in 1998 as 21.58 for blacks, 4.88 for whites, and 9.64 for Hispanics.<sup>65</sup> This seems shockingly high for black males. The numbers for males ages 0-14 tells a very different story. According to a Centers for Disease Control and Prevention database for the same year, black men under the age of 15 faced an overall gun fatality rate of 2.17, whites 1.25, and Hispanics 1.25.<sup>66</sup> Clearly what most people consider “children” are not the ones suffering from gun violence. Young adult men facing many other issues such as drug use and other criminal activities are the most at risk and have the biggest effect on the statistics. The data Cook uses in a paper which purportedly discusses “children” is simply misleading.

Cook also makes certain policy suggestions when he asserts that, “increased sales taxes on guns and ammunition, or even licensing systems with annual permit fees for gun ownership,

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<sup>62</sup> PJ Cook and J Ludwig, "The Costs of Gun Violence Against Children," *The Future of Children* 12.2 (Summer/Fall 2002): 90.

<sup>63</sup> Federal Bureau of Investigation, “Crime in the United States: 2007,” [http://www.fbi.gov/ucr/cius2007/data/table\\_20.html](http://www.fbi.gov/ucr/cius2007/data/table_20.html) (accessed April 22, 2009).

<sup>64</sup> Cook “The Cost of Gun Violence Against Children,” 89.

<sup>65</sup> Cook “The Cost of Gun Violence Against Children,” 89.

<sup>66</sup> Centers for Disease Control and Prevention, WISQARS database.



may further contribute to market thinness and increase transaction costs to criminals.”<sup>67</sup> He bases this claim on the higher cost of illegal guns in Chicago, which has banned handguns, versus other cities with fewer restrictions and cheaper illegal guns. Even Cook is unable to make a firm conclusion on whether an increased cost for guns actually reduces crimes committed with guns. The best he is able to conclude is that homicides and robberies in Chicago that involve guns are six percentage points lower than a 200-county average from 1994 to 1996.<sup>68</sup> This seems like a flimsy reason for increasing the price of legal guns, considering the impact it would have on the poor. Even a Task Force from the Centers of Disease Control and Prevention, which according to some has a pronounced anti-gun bias,<sup>69</sup> “found insufficient evidence to determine the effectiveness of any of the firearms laws or combinations of laws reviewed on violent outcomes.”<sup>70</sup> The academic work of Gary Kleck, Don B. Kates, James D. Wright, Peter H. Rossi, and Daniel D. Polsby often stand in direct contradiction to Cook’s findings, yet rarely receive mention in the mainstream media or other public forums. As a testament to the biases of the CDC studies, Gary Kleck is referenced in only one citation, yet he is one of the premier, award winning researchers involved in studying gun violence and gun crime.<sup>71</sup>

Much of the academic work advocating reduction in gun ownership and increased gun restrictions comes from the medical field where anti-gun biases are easily and frequently encountered. For example, Dr. Deborah Prothrow-Stith, an associate dean and professor of public health practice at the Harvard School of Public Health and author of *Deadly*

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<sup>67</sup> P.J. Cook, J. Ludwig, S.A. Venkatesh, and A.A. Braga, "Underground gun markets." *Economic Journal* 117 (November, 2007): 612.

<sup>68</sup> Cook, "Underground Gun Markets," 610.

<sup>69</sup> Kleck and Kates, *Armed*, 32.

<sup>70</sup> Centers for Disease Control and Prevention, "First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws," <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5214a2.htm>.

<sup>71</sup> Florida State University College of Criminology and Criminal Justice, "Gary Kleck," <http://www.criminology.fsu.edu/p/faculty-gary-kleck.php>.

*Consequences*, has no reservations in stating that, “My own view on gun control is simple. I hate guns and I cannot imagine why anyone would want to own one. If I had my way, guns for sport would be registered and all other guns would be banned.”<sup>72</sup> Personal biases exist in every researcher, but the medical world has a history of presenting poorly researched and academically questionable papers on the topic of gun control.<sup>73</sup>

The most influential work from the medical field may be “Gun Ownership as a Risk Factor for Homicide in the Home”. This study was led by Arthur Kellermann in 1993 and claimed that the presence of a firearm in the home made it 2.7 times more likely that someone in that household would be murdered by a firearm.<sup>74</sup> This journal article became one of the most widely cited works dealing with homicide and guns.<sup>75</sup> Its conclusion and methods, however, are problematic and misleading. The basis of the study was a comparison of sample households where homicides occurred to a control sample of supposedly similar households. From this comparison the study determined that households with guns were more likely to experience homicides. The first problem with this conclusion is that people who are at higher risk for being murdered could be more likely to own guns. The presence of the gun does not necessarily change this risk factor. It is very likely that victim’s high risk lifestyle puts them at higher risk for murder, not the ownership of firearms.<sup>76</sup> Nearly all of the homicides in this study were committed with a gun brought by the intruder, not the gun in the home.<sup>77</sup> This indicates the gun

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<sup>72</sup> Deborah Prothrow-Stith, *Deadly Consequences* (New York: Harper Collins, 1991), 198.

<sup>73</sup> Kleck and Kates, *Armed*, 31-83.

<sup>74</sup> Arthur Kellermann, Frederick P. Rivara, Norman B. Rushforth, Joyce G. Banton, Donald T. Reay, Jerry T. Francisco, Ana B. Locci, Janice Prodzinski, Bela B. Hackman, and Grant Some, “Gun Ownership as a Risk Factor for Homicide in the Home,” *The New England Journal of Medicine* 329 (October, 1993): 1084.

<sup>75</sup> Gary Kleck, “Can Owning a Gun Really Triple the Owner’s Chances of being Murdered?,” *Homicide Studies* 5 (2001), 65.

<sup>76</sup> Kleck and Kates, *Armed*, 75.

<sup>77</sup> Kleck and Kates, *Armed*, 75.

is most likely a measure of risk, not a cause of it. The victims were also selected from very high risk households. This, coupled with a limited number of cases, makes a nationwide application of the potential risk factor questionable.<sup>78</sup> Finally, the statistics themselves are disputed by Gary Kleck in “Can Owning a Gun Really Triple the Owner's Chances of being Murdered?” It seems odd that a paper as rife with criticisms and uncorroborated assumptions should be one of the most widely cited works regarding gun violence. The belief that a gun in the home increases one’s risk for homicide has become so widespread that many people restate this “fact” without knowing the source and quote it blindly without realizing its problematic basis.

This analysis of the problems inherent in many articles from the medical field is only a brief exploration to highlight certain issues that commonly arise in such papers. Don B. Kates provides a much more detailed investigation into this issue in *Armed: New Perspectives on Gun Control*.<sup>79</sup> Although this paper only addresses a few commonly misconstrued facts regarding firearms, the aim is to illustrate that much of what is presented as concrete information about gun control is often widely contested or even academically disproven. Gun control often becomes an emotional debate with little attention paid to facts. It is important to identify who caters to emotion, rather than fact, on all sides of this topic.

## **Conclusion**

The discriminatory effects of gun control are clear, but its positive impact on violent crime is not. Gun control in the United States is based on a history of racism, classism, and discrimination. Even the most well meaning measures implemented today are still based on a

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<sup>78</sup> Kleck and Kates, *Armed*, 77.

<sup>79</sup> Kleck and Kates, *Armed*, 31-83.

pattern of "pre-judging" gun control issues based on false beliefs or without knowing the real facts and circumstances of gun violence. In its earliest forms, gun control existed to keep firearms out of the hands of African-Americans, especially free blacks, who were a perceived threat to white supremacy. As wide spread immigration into the United States began, people in established positions of power started to feel threatened by these new groups and took measures to keep firearms out of the hands of immigrants. The blatantly discriminatory laws used in the South would have been politically impossible to legislate after 1900, so gun control efforts shifted to discretionary permitting that allowed police or licensing boards to keep "undesirable" people from legally accessing firearms.

Intentionally or not, the poor eventually became the primary targets of gun control discrimination. Laws were instituted to drive up the minimum price of firearms in the name of consumer safety and crime reduction. Authorities also barred people who lived in public housing from keeping firearms in their homes. These recent measures were taken in the name of public safety, but they have a disproportional impact on those of a lower socioeconomic background with almost no persuasive, certainly not definitive, evidence suggesting that these laws will reduce crime. In some instances gun bans are even accompanied by an increase in gun violence. To implement further unproven measures that are inherently biased toward certain people would be irresponsible. Many attempts to control guns result in a disproportionate burden on the poorest and most vulnerable people in our society with no proven benefit to the surrounding community.

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